SUBMISSION

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Te Kāhui Kaunihera ō Aotearoa.

Inquiry on the Natural and Built Environments Bill

Local Government New Zealand's submission to the Inquiry on the Natural and Built Environments Bill: Parliamentary Paper

4 August 2021

We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and promote the good governance of councils and communities. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities. Our purpose is to deliver our Vision: "Local democracy powering community and national success."

This submission has been approved by LGNZ President Stuart Crosby.

LGNZ wishes to appear in support of this submission.

Introduction

Local Government New Zealand (LGNZ) thanks the Environment Committee for the opportunity to submit on its Inquiry on the Natural and Built Environments Bill (NBA). As New Zealand's local government peak body, LGNZ has prepared high-level sector input for the Committee's consideration.

LGNZ looks forward to working with the Government to refine and contribute to this Bill and to the Strategic Planning Act and the Climate Change Adaptation Act. We are pleased that Minister Parker has decided that a stronger relationship with local government is needed to progress this reform package and initiated a process to effect this. Local government is perfectly placed, through collaborative processes with central government and iwi and hapū, to ensure the success of the NBA. As the tier of government closest to the people, and whose primary job it is to implement, we know first had the limitations of the existing resource management system and remedies needed to address these limitations.

We are broadly supportive of the high-level direction the Government has taken with these reforms, particularly in the areas of planning standards, a national planning framework, and strategic planning. These are all essential if we are to develop a system that both protects and improves the natural environment while also enabling resource use and development within limits. To do this we need to get the detail right. That detail needs to correctly identify and address the weaknesses of the existing system, as well as the foreseeable issues with the proposed reforms as they stand.

To do this we undertook extensive analysis of the exposure draft with the support of expert advice, and with the constructive intention of making the new resource management system work. Most, if not all, of the issues raised in this submission were extensively canvassed with the Ministry for the Environment well ahead of drafting, and access to the evidence and experts informing our views was fully provided in an open-book fashion (and readily taken up).

This work has raised a number of key areas where we think the NBA has missed the mark, failed to get the detail right, and in some cases introduces structural weaknesses into the planning system.

These include, but are not limited to:

A lack of clear problem definition: The proposals appear to assume that local government and local voice are the cause for the environment being inadequately protected or for decisions being made too slowly and too litigiously. However, councils merely operate within the system established and controlled by central government, and over the past 30 years these stewardship responsibilities have been poorly undertaken.

Exclusion of local voice: The NBA aggregates decision-making to regional bodies without clear indication of how these bodies are steered by sub-regional perspectives since district plans are being eliminated. There is no robust mechanism for local parties to hold decision-makers accountable for their decisions.

Underweighting of urban areas, the built environment and infrastructure: Despite containing the word "built" in the title, the NBA underweights urban development, the built environment and infrastructure compared to the natural environment. This is likely to see the outcomes that the Government wants to achieve being unrealised.

Flexibility innovation and adaptation: The NBA risks being over-prescriptive and narrow in its approach, restricting the ability of actors within the system to innovate and adapt to meet current and future challenges.

Reform burnout/system capacity: This reform of resource management legislation is a significant piece of system change, in and of itself, but it is playing out in a wider environment of capacity and capability shortages and general reform fatigue. There does not seem to be sufficient consideration to implementation and transition within these constraints, as well as plan making processes that are already well-progressed.

Drafting issues: Overall, we note many issues with the drafting of the NBA as written, not limited to inconsistent use of terms, conflicting direction, and framing. Of primary concern is the lack of clarity in the Purpose of the NBA, which repeats the mistakes of the RMA and is likely to lead to years of legal challenge.

Reform is needed

LGNZ has been seeking reform of the RMA for many years and is pleased that the government has stepped up to the plate to deliver that reform. LGNZ agrees with some of the listed problems outlined in the Randerson Review, which may be summarised as follows:

- Current land and water use is proving increasingly *unsustainable* – biodiversity and ecosystem health has been degraded and resources have become increasingly over-allocated. This is primarily due to the lack of national direction and central government resourcing. It is also due to the cumbersome planning processes with wide public involvement and appeal rights.
- *Subjective* elements such as 'amenity' values have been used to protect the status quo in the absence of national direction, the lack of a national methodology and the significant opportunities for public participation and rights of appeal within the RMA.

- *Environmental limits* need to be given more prominence as a key purpose of resource management. Again, limits can be set under the RMA but national direction has been late to the game and when delivered has been unclear. In the interim given the costs of determining such limits and the public participation and litigation involved.
- Resource management direction, planning decisions have contributed to increased land values[1] and exacerbated *housing supply* challenges. Again, core to this has been a lack of national direction and the processes in the RMA enabling wide public involvement and ongoing appeal rights.
- 'Effects management' does not provide sufficient strategic and spatial planning and does not enable development eg to resolve housing supply challenges, to occur where and when it needs to (conditional on development being well-planned and well-regulated). There has been little national and regional level strategic planning.
- More active effort is required toward decarbonisation and adaptation/building community resilience against the effects of climate change. The Climate Change Commission's report is clear – New Zealand needs to act now and act decisively. Again, despite opportunities the central government response through the RMA has been weak. Climate change resilience and adaptation has been too political. Local government has tried to respond but given the complexity, cost and litigation risk progress has been too slow.
- Successive amendments to the RMA have made it unwieldy, litigious, and complex. More and more systems and provisions have been bolted on and local government has been left to 'carry the can'.
- RMA plans and processes are numerous, difficult to navigate and vary in quality.
- National direction lacks clarity and integration and/or is absent in many key areas, which has exacerbated the faults of the system.
- Tools and processes for meaningful Māori engagement are no longer fit for purpose and their potential was not fulfilled.

There is much in the overall architecture of resource management legislative reform to commend.

[1] We acknowledge that it is natural for land values to increase as a city grows because more centrally located land, or land located in areas of high demand, is more valuable due to amenity or more advantageous access to labour markets and business activity. This reflects reasonable differential rents that make up the gradient of a given urban areas' land price profile. However, land use regulation under the RMA has resulted in land values increasing to a degree that has decoupled the level (not merely the slope or gradient) of land price profiles of our major urban centres and as well as many towns in the regions from economic fundamentals. This phenomenon is also known as "economic" rent (not "commercial" rent), because it reflects the rent that can be demanded for the use of land over and above the rent that would be necessary to incentivise its best use. See Alan Evans (2004), *Economics, Real Estate and the Supply of Land*, pp.25-29.

There is clear merit, for example, in the proposition that the NBA Act and the Strategic Planning Act move away from the primary 'effects-based' approach embodied in the RMA, toward more of a futures-focused/'promotion of positive outcomes' approach, across all four well-beings. This active planning approach is evident in the reworded 'purpose statement' and the 'national outcomes' recommended for inclusion in the NBA Act.

What else is needed?

Clear problem definition

What needs to be avoided is the *'anything has to be better than the RMA' approach*. Critical appraisal is required to ensure the proposed changes will unquestionably improve on the status quo. Some of the proposed matters for inclusion in the new legislation do not achieve this objective.

Local government and a 'local voice' are not the cause for the environment being inadequately protected or for decisions being made too slowly and too litigiously. More certainty, more speed, less cost, and better environmental and community outcomes are universal desires. Central government has, through the RMA, set the framework within which local government must operate. More efficient and streamlined processes, the use of, clearer and integrated national direction, national resourcing to enable expanded compliance monitoring would have greatly helped the cause. The lack of this critical support has driven the environmental degradation through the term of the RMA. This has led to a more oppositional approach – which is continued through to the NBA. This has led to a binary view of resource management, namely that the environment and resource use are at odds with each other. This is not necessarily so. Both can be enabled, and in local government's view, must be delivered through the NBA. Otherwise, the same political and litigation tensions will continue.

On other matters, such as the laborious plan making process, failings have been influenced by the nature of the processes local government has been required by law to apply, the absence of comprehensive national instruments and a system that lets anyone be involved with unconfined appeal rights.

Comprehensive and considered transitional arrangements

LGNZ strongly agrees with Taituarā that a *staged approach to implementation* is necessary. We would like to work with officials on how this can be managed. We cannot put the economy and major initiatives to improve environmental outcomes on hold for 5-10 years while the NBA systems are developed, and the planning frameworks prepared. An interim system that efficiently and effectively utilises existing systems and plans must be developed. There are too many pressing issues, and too little resourcing and capacity, to be addressed to avoid such an approach.

We would like to explore how existing plans and plan processes currently in train can essentially be "knitted together" into combined regional plans, while the NBA is refined and the NPF developed.

A robust NPF is essential as without it, Part 2 of the NBA is directionless. This will also allow the RSS to be prepared. Only then can the NBA plans be developed.

We would like to see reform of the resource management system as a "long game" to make sure

the changes proposed are able to be implemented.

Retention of a local voice

The key issue for local government is the NBA's nationalisation and centralisation of resource management powers. The over centralisation of decision-making power, along with the proposed process to prepare NBA plans, effectively excludes "local voice" and does not fit with the current arrangement of local government. This centralisation of decision-making, together with the proposed process for plan-making for NBA plans, *will have a profoundly limiting effect on the abilities of communities and iwi/Māori to express local preferences, as well as on local government ability to meet is core purpose*, and will hinder the government's objectives for the reforms being achieved.

Our principal concern is that while the Government has initiated the Future for Local Government Review, decisions made as part of this reform are so fundamental as to reshape the role, functions and potentially form of local government ahead of any findings and recommendations from the Future for Local Government Review Panel. Indeed, there is a risk that decisions made as part of the RM Reforms will constrain the scope of the Future for Local Government review.

Alongside iwi/hapū and central government, local government has a critical role to play in the success of the NBA. Local government not only provides a local voice to the processes but is perfectly positioned to advise on implementation and practical system process issues. Recently Māori wards have been widely introduced providing local iwi and hapū with a strong voice across local government. The introduction of regionalisation, and joint planning committees, immediately reduces the benefits to iwi and hapū of these changes. Collaborative partnerships between central government, iwi and hapū and local government, at all levels of the NBA, are required to deliver enduring outcomes, the government's reform objectives and the ultimate success of the NBA.

There is no 'problem' justification for joint committees. System change can be delivered far more efficiently and effectively through retaining the role of local government and simplifying and streamlining the processes local government is required to implement. The development of joint committees is fraught with complexity (as can be seen from the limited detail provided to date) and simply adds another layer of bureaucracy. *It is the processes, not the decision-makers that need to be changed* to deliver the government's reform objectives.

Urban areas, built environments and infrastructure

It is widely recognised that the RMA has failed to deliver on the outcomes needed for our urban communities, built environment and infrastructure development. *Urban areas need specific recognition and provision* through the NBA. Continued failure will significantly reduce growth, prosperity and well-being for all New Zealanders. With the right statutory settings local government is structured to help deliver successful community outcomes.

Our built environment in urban areas has suffered, most publicly reflected in housing. This is not just a physical resource issue; it is also a significant social issue for our communities as most New Zealander's live, work and play in urban areas. It is also reflected, along with the lack of provision for infrastructure generally, through issues within the three waters sector. The RMA's effects-based approach has been too myopic to address these issues and the process under it so

laborious. While an outcomes approach provides potential to be a success the NBA reforms must ensure that its objectives are achieved. Again, local government is placed to be part of the solution to these issues.

Flexibility, adaptability, and innovation

The NBA must be drafted, and its systems developed, to *encourage and deliver flexibility within critical environmental limits*. We have too many issues (such as housing) and too many unknowns (such as changes through climate change) to be locked into a single approach and outcome. We must be agile and adaptable, and innovation must be embraced. The systems under the RMA have for too long protected the status quo. The NBA must not repeat that.

Reform 'burn out' and resourcing/capacity

The Government is driving an enormous amount of reform. On its own the NBA is a significant reform package. But when combined with all the other reforms underway there is considerable risk that it will not deliver the government's objectives for the reforms. It must also seamlessly integrate with existing legislation (including the LGA and the LTMA) to avoid fundamental conflicts arising. The capacity of the system to deliver is under significant pressure.

LGNZ has concerns that not only will the NBA itself be compromised but the pressures will also compromise the freshwater reforms**.** In parallel the government is focused on freshwater allocation and 'ownership', Three Waters Reform and a review of local government – all of which require significant engagement and attention from local government, iwi and hapū. We simply do not have the capacity to sustainably deliver all these changes at the same time – a staged and prioritised approach is required.

Structure of submission

This submission is structured as follows:

1. LGNZ principles – RM reform
2. NBA exposure draft
   - Overall framing
   - Resourcing
   - Part 2 – Purpose
   - Partnership with iwi
   - Limits and outcomes
   - National Planning Framework
   - Implementation principles.
3. Institutional and Governance Arrangements for Preparing Plans and Strategies

LGNZ principles – RM reform

In March of this year LGNZ National Council adopted seven principles to guide its position on resource management reform (Appendix A). These principles have been applied to the proposals and informed this submission.

Principle 1: Sustainability and well-being of communities

The resource management system must promote environmental sustainability and the needs of future generations but it must also expressly provide for the economic, social and cultural well-being of people and communities recognising that resource use and development is critical to community wellbeing and can itself produce positive environmental outcomes.

Principle 2: Accountability follows responsibility

Those that are accountable for policies and their implementation need to have a meaningful role in the development and approval of those policies.

Principle 3: Democratic, values-based decision-making

Where information is incomplete and where judgements between relevant competing values must be made (as is routinely the case with resource management decisions), decisions ought to be taken by those with a democratic mandate to represent communities (or by their direct appointees).

Principle 4: Subsidiarity in planning

Planning decisions should be taken at the level of those most directly affected. That requires retaining a strong degree of local planning. Local planning needs to be integrated with planning at a broader scale to the extent that communities affected by decisions that extend beyond the local, but the latter should not subsume the former.

Principle 5: National issues require national policy guidance

Local government welcomes a role in addressing issues of national importance and will need clear and comprehensive national policy direction (and where appropriate funding support) in advance of assuming responsibility.

Principle 6: A commitment to partnership with mana whenua

Resource management legislation needs to adequately reflect a commitment to partnership under the Treaty and greater collaborative governance by ensuring it is reflected in:

- Plan development and central and local decision-making processes;
- The scale of local decision-making; and

- The substance of decisions made.

Principle 7: Commitment to implementation

Successful implementation of RMA reforms will require a carefully designed transition to minimise unintended consequences and unreasonable transaction costs. Central government funding will be required to ensure successful delivery by both central and local government, and to build capacity of iwi/Māori.

NBA Exposure Draft

Overall framing

The key issue for local government is the NBA's nationalisation and centralisation of resource management powers and controls to the Minister of the day and how this intersects with local government's statutory purpose and functions under the Local Government Act 2002. Local government is effectively excluded or marginalised from the processes in the NBA. With its significantly diminished role, local government's ability to deliver its statutory function to "play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach"[2] is eroded.

LGNZ considers that a more pragmatic and inclusive approach should be adopted for the new NBA to allow a local voice. While carefully developed fundamental limits make sense, great care needs to be taken to allow people and communities to grow and thrive, and to enable current 'crises' such as climate change and housing to be addressed at the level where people actually 'live, work and play'. If people and communities are disfranchised and marginalised, then the chances of enduring and sustainable 'positive environmental outcomes' through the NBA will be lost.

Resourcing

Fundamental to the success of the NBA is that of resourcing. The scale of change proposed by the Government to the resource management system is enormous on its own let alone sitting alongside freshwater planning reform and giving effect to other national policy direction. In parallel the government is focused on freshwater allocation and 'ownership', Three Waters Reform and a review of local government – all of which require significant engagement and attention from local government, iwi and hapū.

A detailed transitional period is required. New Zealand cannot wait 10 years for multiple reforms to 'bed in'. Nor can New Zealand wait 10 years to start delivering results. The NBA must provide a transitional framework to ensure that it is integrated in a sustainable way while current issues have the scope to be immediately addressed. To achieve this, and its objectives for the NBA, central

[2] Local Government Act 2002, section 3(d).

government must provide the resourcing necessary to:

a. Support iwi and hapū capacity and capability development to enable Te Oranga o te Taiao to be delivered and the principles of Te Tiriti to be given effect to;

b. Address the scale and significance of the issues facing the success of the NBA (including climate change, biodiversity, housing supply, the need to deliver robust economic development and provide for social inclusion and equity across a myriad of complex social issues);

c. Support the interpretation and implementation of brand-new legislation, strategic planning and outcome-based planning to be developed and delivered at a time when urgency is required across numerous complex issues;

d. Support and grow the structures and capability (largely within local government) which are fundamental to delivering a successful NBA;

e. Deliver the 'culture change' necessary to move on from the RMA efficiently and effectively and immediately implement the provisions of the NBA; and

f. Enable the robust and managed delivery of the NPF and RSS (these must occur before the NBA plans are developed – it must be in sequence rather than parallel).

'Transformative' change requires 'transformative' resourcing.

Part 2 – Purpose

The Parliamentary Commissioner for the Environment argues that environmental law requires specificity and clear direction to avoid lengthy and costly arguments and the uncertainties they create. Our legal advice supports this and has identified some key concerns within Part 2 of the NBA:

- A greater need for strategic direction across the NBA and clarity within the purpose;
- A greater need for direction within the purpose as to limit setting (and enabling use within limits) and direction as to prioritisation of outcomes; and
- Greater recognition and provision for urban areas, the built environment and the urgent need for, and role of infrastructure development and use and development generally.

Without clarity it is the courts that will ultimately decide those matters which is what has happened under the current RMA. The NBA should promote both environmental protection and use and development to enable growth and prosperity for people and communities across New Zealand; without prosperous and diverse communities, the NBA will never deliver the 'transformative' change being sought.

The purpose of the NBA (clause 5) has been viewed in this light. While there is no doubt that the purpose promotes environmental protection, it does not promote prosperous, healthy, and diverse, people and communities. There is no ensuring use and development within appropriate environmental limits. Present generations can only use the environment 'without compromising'

future generations (contrary to the government's objective and the drafting in cl 14). Interpreted in the extreme, this could be used as a means of stopping almost all resource use. Even on a balanced reading of this clause, the wording is highly restrictive and ignores the need for infrastructure, urban development and housing affordability so that we can grow local communities and make them vibrant. Further complication is added by retaining a focus on effects while adding limits and outcomes. That does not provide system efficiency.

Within limits, and with proportionate and efficient controls, use and development must be better enabled within the purpose to ultimately allow a consenting pathway to be developed. Examples of New Zealand's need to ensure use and development through the NBA purpose include:

a. In excess of $120b of investment is required over the next 35 years to fix (highly complex) Three Waters issues;

b. The need to significantly adapt and grow our infrastructure and economy to respond to climate change and reduce GHG emissions; and

c. The urgent need for new housing (and the necessary infrastructure to support it).

The purpose of the NBA fails to respond to such issues and the provision of social inclusion and equity across a myriad of complex social/environmental issues that communities are facing.

Overlaid to all this, and arguably primary to it all, is Te Oranga o te Taiao. A strong Māori focus within the purpose of the NBA is supported; and has been delivered. But clarity and certainty of Te Oranga o te Taiao, along with significant resourcing for iwi, will be required to ensure that the NBA delivers and to avoid extensive litigation as to what it means.

The key to a purpose of a statute such as the NBA is to provide clear strategic direction as to how conflicts are to be resolved. It must direct at the strategic level when and how economic, social and cultural considerations should be considered (or conversely when they should not be considered). As the Parliamentary Commissioner for the Environment (PCE) commented *"we should be very clear about what we are trying to achieve*". While an improvement on earlier versions the purpose does not provide such clarity, raising critical questions as to its effectiveness and leaving a significant amount of uncertainty. Extensive, expensive and ongoing litigation will be the result.

Table 1 contains more detailed commentary regarding the Purpose and Principles. LGNZ looks forward to working with officials as the drafting of the Purpose and Principles is progressed, following the recommendations of this select committee Inquiry.

Partnership with iwi

Local government is committed to partnering with iwi and hapū in their regions and districts. Local government around New Zealand has been developing new and effective ways to successfully working with iwi and hapū. But local authorities are not the Crown and to 'give effect to' the principles of Te Tiriti and to achieve Te Oranga o te Taiao the NBA provisions must be clear and central government must provide leadership, and resourcing to iwi and hapū above and beyond what has been negotiated through the Treaty settlement process. These obligations cannot be left

to local government (and consent applicants) to resolve.

Local government will support (with resourcing, where appropriate, and clear direction through the NBA) central government and iwi and hapū to deliver positive outcomes for the environment while growing and strengthening communities.

Limits and outcomes

To be enduring the right decisions need to be made at the right level. The NBA nationalises and centralises planning functions into the hands of the Minister through the NPF (limit setting and outcome prioritisation). Under the NBA the national interests of the Minister of the day override the interests of local communities. That may be appropriate with the right circumstances, and matched checks and balances as well as the involvement of communities. But the NBA does not provide clear direction and controls (including local input) on the Minister. It is those matters, along with a lack of clarity, that raise concerns for LGNZ with the NBA exposure draft.

Limits

The setting of the limits will be the most fundamental aspect of the reforms; the Minister of the day has broad scope within which to set the limits. The ability of each new Minister to change the limits, without clear direction and control within the NBA, provides significant ongoing uncertainty.

While limits give certainty, and can drive change and innovation if set well, if not they provide no flexibility, adaptability or room for innovation to changing circumstances (especially in relation to new technology, living patterns and managing climate change). Further, on the policy basis that a limit 'must' be complied with, a breach of any limit (regardless of the benefits of achieving other limits or outcomes) presumably (it is unclear in the drafting) leads to a prohibited activity. Great care must be taken to ensure this does not deliver unanticipated adverse outcomes, such as foreclosing otherwise beneficial environmental outcomes. The ability to have targets rather than limits as appropriate, with regular, transparent, and clear reporting, would often provide a better overall environmental solution.

The ability for local authorities to set more stringent limits is retained in the exposure draft (as allowed through the NPF). Unless very clear and detailed direction and methodology is provided through the NPF this opens limit setting to be further argued at the local level resulting in repeated, lengthy, and costly litigation.

Qualitative limits and their definitions create considerably more uncertainty, cost, and room for argument than quantitative limits. They also add additional complication – for limits to work effectively they need to be kept simple. For example, the Environment Court has found the definition of natural inland wetland within the NPS-FM (2020) to be "imprecise" and to raise more questions than it answers.[3] This leads to significant uncertainty and costs and a significant loss in

[3] *Director-General of Conservation v Taranaki Regional Council* [2021] NZEnvC 27 at [36].

confidence as to policy direction and outcomes.

Limits should be quantitative, and targets or outcomes should be used for qualitative matters. The concept of a 'limit' (as a tangible measure) is also often better suited to western science outcomes than to matauranga Māori outcomes which include holistic, metaphysical and spiritual values.

Outcomes

Our advice also discusses the proposed outcomes and notes that an extensive list is provided in clause 8. The advice cites the PCE’s comments on the Review Panel's drafting as remaining relevant: "simply spelling out a raft of new outcomes will not make them compatible or deliverable."

It appears that the intent is the Minister of the day decides which outcomes prevail through the NPF (clauses 10 and 13). Of concern is that it is now proposed that the NPF has the status of regulation and the process provides largely unfettered power to the Minister. Parliament is in effect delegating, without clear parameters, the critical direction of the NBA to the Minister (this also includes limit setting). It is deeply ironic that a (if not the) critical issue that has affected the success of the RMA, the lack of national direction, is central to the NBA. The NBA's framework increases the scope for political influence in the guidance setting process, and decreases the checks and balances enabled by a more institutionally driven process.

The use of various verbs arguably provides a hierarchy within clause 8. For example, 'preserving', 'protecting' and 'restoring' are all directive verbs. 'Developed', 'pursued' and 'supporting' are weaker verbs. If intended, the NBA must specifically state in clause 8 if there is to be no hierarchy among the outcomes to avoid court litigation. As the PCE commented in relation to the earlier proposed provisions "if primary legislation can provide no guidance on the priority to be accorded to the many outcomes, officials, politicians – and ultimately the courts, will be left weighing [them]".

Urban areas are poorly provided for through the outcomes (and the built environment is not mentioned). Housing supply is also weakly recognised. The way those outcomes are drafted, along with infrastructure, is likely to see the continued failure of our planning legislation to deliver for urban areas.

A key issue given the challenges facing local communities is the provision of infrastructure. The current provision is very weak on implementation ("support"), does not provide any additional recognition for regionally (or nationally) significant infrastructure and does not link to other outcomes (such as the need to deliver infrastructure to unlock housing supply issues). The Government is presently investing (for example to service new housing or reduce GHGs), and offering (for example in Three Waters) significant sums of money into infrastructure but none of that commitment, nor its apparent importance, is reflected in the outcomes provided.

National Planning Framework

The adoption of a NPF is supported. It has the potential to provide integrated national level direction that has been lacking to date. However:

a. The key parameters and direction within the NPF should be clearly stated within the NBA itself;

b. The NBA should explicitly state that the NPF is to be developed by the Minister with clear input from iwi and hapū and local government to ensure a local voice is provided – the present approach of Ministerial decree, without such input, will not lead to enduring outcomes needed to address such fundamental issues;

c. The NPF provisions must be meaningful and not continue the history of leaving the hard decisions (and hard lifting) to local government;

d. The NPF must be precisely and clearly drafted to avoid extensive litigation as to what its provisions actually mean and how they fit together (it is not good practice, nor provides policy confidence, to rely on guidance to try and interpret regulation as is occurring with the NPSFM and NESFW) – the regulations must be clear in themselves; and

e. Unless robust transitional provisions are provided (which is LGNZ's favoured approach) then the NPF must be delivered alongside the NBA taking effect – any gap will significantly impact responses to addressing the numerous 'crises' and environmental, social, cultural and economic issues local communities are facing.

Implementation principles

A 'culture change' is required to achieve the 'transformative' change necessitated by the NBA. We are concerned that the implementation principles proposed will not, in their present form, provide guidance for such change. Nor do they provide sufficient clarity. The NBA itself must provide the impetus and direction for change.

None of the principles:

Relate to timely, efficient, and proportionate processes akin to s18A of the RMA (which may be deliberate given the shift of all key processes to the Minister);

Assist with outcome planning and the culture change that will be required to achieve it (for which Local government will be at the forefront in helping local communities adapt); and

Drive outcomes to deliver growth and efficiency to support our communities and provide for social inclusion and equity across a myriad of complex social issues.

Institutional and Governance Arrangements for Preparing Plans and Strategies

LGNZ has worked with external advisers and our members and focused on the proposed governance, institutional arrangements, and processes for preparing, approving, and implementing Natural and Built Environments Plans (NBA Plans) and Regional Spatial Strategies (RSSs).

In light of the principles that LGNZ National Council adopted, the primary questions we considered were whether the proposed governance, institutional arrangements and processes for the preparation, adoption and implementation of NBA Plans and RSSs are the best available for resolving the challenges identified within the current RMA regime? And if the proposed arrangements are not the best, what principles and what alternatives should be considered to better resolve these challenges.

We have carefully analysed and considered the proposed direction as set out in the Randerson Report, the exposure draft and the accompanying material. Our aim was to constructively assess how the NBA governance structure for plan making, as proposed, would operate while remaining democratically accountable. We have assessed numerous scenarios and configurations and have come to the conclusion that the fundamental proposal to consolidate planning to a regional level without corresponding structural reforms of local government (such as extending local board type representation beyond Auckland), is not workable. It breaks the fundamental democratic compact between taxation and representation. Furthermore, the proposed structures – as set out – are likely to exclude the ability of communities to have a meaningful say in the shaping of their local places. In our view, the direction of change ignores that most of planning, as based on place and proximity to place, is inherently local and must flow from the local, upwards into regional and national planning.

In critiquing the basic proposal, we appreciate how challenging this is to get right, but it must be adequately addressed if the new NBA framework is to be stable and sustainable into the long-term. This is an area where central and local government need to work together progressively over the reform period to develop a principled case for how to proceed as a starting point, which combines top-down and bottom-up decision-making.

Local Government's and Local Authorities' critical role in place-making

It is LGNZ's view that any consideration of institutional and governance arrangements for preparing, adopting and implementing plans, as well as strategies, must be guided by, and begin with, a framework for the allocation of decision-making responsibilities to the appropriate level of government – local, regional and national – and so assign functions at a level that captures the relevant scale of concern and associated costs and benefits.

In our view a significant reason why the RMA failed to deliver on its intended environmental and development outcomes was because it failed to allocate decision-making at the appropriate level. In short, there was a dearth of national guidance, regional decisions were devolved to the local level, and there was inconsistent assessment by central government of where local decisions were imposing costs at a regional and national level (for instance local amenity preferences, such as the

protection of low-density neighbourhoods and view shafts, have constrained development capacity with spill-overs into house prices at the regional and national level).

We consider that the RMA would have produced better outcomes had it been more consistent in assigning roles in the planning system using the principle of subsidiarity.[4] This principle contends that social and political issues should be dealt with at a level where the costs and benefits of decisions are borne. Seen through a planning lens, this means that local planning decisions should be made at the local level (district plans), regional planning decisions should be made at the regional level (regional plans, spatial and strategic plans), and national planning decisions should be made at the national level (national planning guidance). The corollary is that where the outcomes of local decision-making are likely to impose costs (or benefits) at a regional, or national level, then that decision should be elevated to that level. Alternatively, national guidance could ensure local decision-making remains local but factors in the regional and national spill-overs.

For the RM Reform process to be successful and sustainable as a system, it should incorporate subsidiarity as a guiding principle, noting that the "principle of subsidiarity is the essence of the Treaty of Waitangi, both in its English and Māori texts"[5].

A necessary requirement for the success of any planning system, but particularly one that uses subsidiarity as a guiding principle, is the role of enshrining local voice in decision-making processes. The new resource management system must ensure communities are democratically empowered to shape their own destinies, provided this is balanced against national and regional-level interests and intergenerational well-being. This is currently expressed through the role that councils play in planning, local land use regulation and place-making. While there is significant scope to improve how these roles are undertaken and directed, LGNZ considers that a democratically guided local voice must be retained as a core element of the planning system.

Maintaining the integrity of local government's key role in place-making is necessary for the long-term viability of institutional arrangements and is consistent with the Government's commitment through the *Terms of Reference* of the *Future for Local Government Review* and *Heads of Agreement* for *Three Waters Service Delivery Reform* to strengthen local democratic participation, active citizenship and inclusion in support of local government's, and specifically local authorities',[6]

[4] The principle of subsidiarity holds that decision-making power should be distributed and devolved to levels that are close enough to the issues, have relevant information and capability, and are able to workably contain the costs and benefits of outcomes that affect a particular community or set or individuals.
[5] Gussen, Benjamen F. (2014) *Subsidiarity as a constitutional principle in New Zealand*. New Zealand Journal of Public and International Law, 12 (1). pp. 123-144. ISSN 1176-3930
[6] DIA (2021), *Heads of Agreement* between The Sovereign in Right of New Zealand and New Zealand Local Government Association Incorporated for Partnering Commitment to Support *Three Waters Service Delivery Reform*, p. 2. Accessed 29 July 2021,

critical role in place-making, which is key to "achieving positive wellbeing outcomes for our communities".[7]

A key reason for this is that place-making (nested within national level guidance to address system-wide concerns) serves the outcomes of communities. Local communities know best local preferences, as well as the resources, relationships, challenges, and opportunities that need to be addressed to achieve them. This is particularly important when engaging with iwi/Māori seeking to express mana whenua preferences (which tend to be sub-regional in scale).

We recognise the need for greater technocratic voice to augment decision-making processes in the resource management system to reflect the natural biophysical constraints of the environment. However, there will continue to be many cases where values-based decision-making is required in the absence of clear technical or scientific direction, and where democratic processes are best suited to deal with these. Again, this is critical when engaging with iwi/Māori, where preferences may be heterogeneous and expressed at a mana whenua level.

LGNZ considers that a planning system can only be sustainable if it is transparent and accountable to those paying for relevant planning activities. While policymakers must consider system efficiency, they must also ensure that any solution in favour of efficiency gains also supports long-term stability of the system.

A Principles-based Framework

It is LGNZ's view that any consideration of institutional and governance arrangements for preparing, adopting and implementing plans, as well as strategies, must be guided by and begin with a framework for the allocation of roles and responsibilities to the appropriate level of government – local, regional and national – and so assign functions at a level that captures the relevant scale of concern and associated costs and benefits.

LGNZ acknowledges that reforming the planning system involves solving how to appropriately balance top-down direction and involvement by national government (centralisation of power) with bottom-up activity and autonomy to empower communities and maintain our democratic institutions (devolution of power). It is our view that our planning system needs more top-down involvement by central government as well as more bottom-up involvement for our communities in local decision-making. LGNZ also welcomes central government's recognition through a wide range of policy and reform programmes, including Resource Management Reform, that the Government has not been involved enough as a steward of our wider system.

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https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/heads-of-agreement-partnering-commitment-to-support-three-waters-service-delivery-reform.pdf.

[7] DIA (2021), *Terms of Reference: Ministerial review into the Future for Local Government*, p. 2. Accessed 29 July 2021, https://www.dia.govt.nz/diawebsite.nsf/Files/Terms-of-Reference-Future-for-Local-Government/$file/Terms-of-Reference-Future-for-Local-Government.pdf. LGNZ notes that the Government has acknowledged not only local government's role in place making more generally, but the critical role that local authorities play in long-term planning and local place making.

We welcome a mutual understanding that a greater degree of centralism at higher levels of governance (eg at the regional or the national level) addresses issues, as well as benefits and costs, which affect broader communities of interest. At the same time, LGNZ considers that sufficient devolution at lower levels of governance distributes power more broadly (but with constraints, checks and balances) and empowers local levels of governance to address as close as possible the issues at hand. In our democracy, effective localised forms of governance also act as a counter-balance to centralised power through citizen self-determination, which:

- Provides a check and balance on government;
- Serves variety;
- Introduces competitive tension;
- Discovers what people value;
- Reveals the costs of supply and the willingness of people to pay;
- Avoids diseconomies of scale, and
- Improves overall efficiency in the system through smart allocation of resources.

The institutional and governance arrangements for preparing, adopting and implementing plans, as well as strategies, must appropriately balance centralism and pluralism to ensure that both future and existing interests are served. A healthy balance creates a constructive tension between maintaining overall prosperity, which makes room for future residents and generations, and protecting established interests, which benefits existing incumbents and present generations.

The RM Reforms must strike a balance between national consistency and local diversity and do so in a way that enables greater coordination, accountability and democratic participation. Since different issues require decision-making roles to be distributed to different levels across society, striking the right balance is a delicate undertaking and ongoing calibration exercise.

LGNZ has considered the Government's high-level proposal in detail and, in our view, it does not strike the needed balance between top-down and bottom-up decision-making to manage a variety of outcomes and effects. It is also not clear whether local government's role in place making is supported and strengthened. If anything, the proposals appear to shift place-making away from local authorities to regional and national levels. While we welcome more central government involvement in matters of national relevance (limit setting, national guidance), we do not support Ministers' disempowering communities' ability to govern over local issues that affect only them (where there are no spill-over effects onto larger communities of interest).

In its most basic sense, a principled framework for the allocation of roles and responsibilities would take into account the geographic reach and scope of outcomes, the communities of interest in relation to these outcomes, and the scale of associated costs and benefits, including the degree to which the jurisdiction (the purview) of decision-makers casts a wide enough net to workably contain the costs and benefits of outcomes that affect a given community or set of individuals.

LGNZ considers that decision-making power (right of approval) should be devolved to decision-

making bodies closest to the issues, on the basis of the principle of subsidiarity, and to the extent that the effects (ie the costs and benefits of the outcomes) are workably contained by that respective level. Conversely, higher levels of governance should not be able to constrain decisions made at a lower level when these do not have spill over impacts on the wider region, the wider system or the national level. LGNZ considers decision-making powers that extend beyond this an overreach of top-down and centralised decision-making that unnecessary disempowers communities and weakens our local democracy.

The table below has been derived from the Ministry for the Environment's work on the wider costs and benefits of urban development and provides a very high level (principled) take on how decision-making powers should be matched with and limited to scale of concern:[8]

Outcomes/Effects	Level	Community/Decision-making body
• Neighbourhood impacts (overshadowing of existing buildings, blocked views, neighbourhood aesthetics and crowing, community facilities, nuisances from activities) • Effects contained within boundaries of local administrations (eg traffic noise)	Local	• Local Board • Local Authority/Council
• Agglomeration of production • Agglomeration of consumption • Transport network effects • Labour mobility and congestion	Regional (functional labour market)	• Regional Council • Joint Committee for NBA Plans
• Housing affordability • Social benefits of growth • Productivity (ability to of citizens to participate in the economy and depth of labour markets) • Environmental stabilisation and	National	• Central Government/National Direction • NPF/Minister of the Day

[8] MfE (2019), Costs and Benefits of Urban Development, p. 29; 46-50. Accessed July 29 2021, https://environment.govt.nz/assets/Publications/Files/costs-and-benefits-of-urban-development-mr-cagney_0.pdf.

GHG emissions • Lead infrastructure (to enable competitive operation of land markets)		

LGNZ considers the above classification of outcomes and effects coupled with the principle of subsidiarity points towards a possible framework for allocating decision-making roles in our planning system.

In our view, the Government's proposals contained in the Exposure Draft concentrates decision-making power in Joint Committees of NBA plans at a regional level and by way of technocratic processes. Furthermore, the proposed National Planning Framework (NPF) focuses decision-making power over relevant rules for the planning of urban environments into the hands of the Minister of the day without sufficient limits, checks and balances.

On a principled level, LGNZ recommends limiting the powers of higher levels of government to their respective domains of interests, and ensuring that the institutional and governance arrangements, including the associated processes, contain meaningful limits to decision-making power (such as approvals) as well as appropriate checks and balances to ensure that neither higher levels of government nor the Minister of the day overreach and undermine the democratic autonomy of communities over issues that affect them and not the wider community at large.

Table 1 – detailed commentary Purpose and Principles

Terms of reference	Comments
4. The purpose of the inquiry is to provide feedback to the government on the extent to which the provisions in the exposure draft of the Natural and Built Environments Bill will support the resource management reform objectives to: • Protect, and where necessary, restore the natural environment, including its capacity to provide for the well-being of present and future generations; • Better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure; • Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of Te ao Māori, including mātauranga māori; • Better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change; and • Improve system efficiency and effectiveness, and reduce complexity, while retaining	• Does the NBA achieve the objectives? • Objective 1 is achieved through the purpose of the NBA, the limits and the verbs used in the outcomes. But care needs to be taken that the NBA is not solely an environmental protection statute. It must expressly ensure development within limits. Further clause 5(1)(b) does not "provide for the wellbeing of present and future generations". Rather it only allows present wellbeing that "does not compromise" future well-being. • Objective 2 is not achieved as use and development within environmental limits is not better enabled. There is no requirement to 'significant improvement in housing supply, affordability and choice.' The provisions are significantly weaker than as sought in this objective. Timely provision of infrastructure does not merit a mention (including in cl 18). The exposure draft fails to deliver for urban environment and the built environment – this starts from the top as neither are mentioned within the purpose. • The principles of Te Tiriti are

appropriate local democratic input.	'given effect to' and greater recognition is provided through Te Oranga o te Taiao. But greater clarity is required so the outcomes of these provisions, and their meaning, is clear and certain. • "Recognition" (which is a weak verb) in Objective 4 reflects the weak provisions for climate change and GHG in the exposure draft. The only references within Part 2 are in cl 8 and are weakly worded and not prioritised. The Climate Change Commission's report makes it clear to deliver on our climate commitments we need much more than recognition of climate change. • Given the limited detail provided it is unclear as to the system efficiency and effectiveness being delivered. The uncertainty in Part 2 does not set the scene for either. The multitude of approaches (such as the three-pronged environmental protection) and the mass of different and inconsistent verbs increase complexity. What is clear in the exposure draft is that appropriate local democratic input will not be 'retained'. A lot of community knowledge and support will be lost from the system through the proposed joint committee and NBA plan processes. The joint committee process, in particular, will fail to deliver

	on this objective. Significantly more clarity and consistency of drafting within the NBA is also required to achieve this objective.
The select committee is also asked to collate a list of ideas (including considering the examples in the parliamentary paper) for making the new system more efficient, more proportionate to the scale and/or risks associated with given activities, more affordable for the end user, and less complex, compared to the current system.	• In relation to Appendix 2 to the parliamentary paper: • It is unfortunate that the first efficiency is wrongly directed in relation to what the problems are (as explained in the general submission local government is simply following the processes set by central government, usually with no direction) and fails to recognise that the NBA does not provide a role for local government in governance of planning functions. • The efficiencies are set at a very high level. There is, as mentioned in the general submission, no doubt that significant system benefits can be introduced (such as wider use of streamlined planning processes and streamlined consenting processes (such as adaption of the COVID-19 fast-track process). Current processes are laborious with ongoing wide public input, and legal challenges. These must be appropriately controlled. Local government wants to work with MfE to develop those options. • The use of national design guidance options and methodologies, and consistent panels could help address the issues arising about ensuring well-being within urban areas while reduce the effect of "amenity" protections simply protecting

	the status quo. We must deliver vibrant and healthy urban areas. Local government wants to work with MfE to develop those options. • The implementation principles are silent on system efficiency and effectiveness and reducing complexity. No equivalent of s18A of the RMA has been included, even as a placeholder. Changes will not occur unless the NBA itself sets the new direction and expectations. • The use of inquisitorial processes will likely create additional delay and uncertainty rather than less. Who will refer matters to this process – the legislation, NPF or parties? Once referred can they stop the process? Court process can take years. This is a fundamental system change that the exposure draft does not appear designed to deliver and there has been no policy analysis to justify.

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Definitions	• The definition of cultural heritage is a broad definition, especially with drafting such as "contributes to an understanding and appreciation" and "surroundings associated with those sites". The later drafting is inconsistent with the wording of 'cultural landscapes" used in cl 8(h).

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	• The definition of ecological integrity is also broad and will require significant time and argument to determine its scope and effect. • Any ultimate definition of infrastructure must clearly include networks and lineal infrastructure. • The definition of mitigation is supported. Clarity as to what is involved will help achieve the efficiency objective for the reforms. • The definition of precautionary approach requires greater clarity. • The definition of well-being includes the environment. Given all the other environmental protections the definition should focus on social, economic and cultural well-being. • There is no definition of built environment (reflecting its limited use despite the name of the NBA). Nor is there a definition of urban area. These terms need to be defined, and given more prominence throughout the NBA.

Part 2
Purpose and related provisions
5 Purpose of this Act
5. (1) The purpose of this Act is to enable—
(a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and
(b) people and communities to use the environment in a way that supports
	• Subclause 5(1):
	  ◦ Is there supposed to be a hierarchy (a) and (b)? Unclear and if there is, or is not intended to be it must be made explicit to avoid litigation;
	  ◦ For Te Oranga o te Taiao what is intended by "upheld" and how does "protecting and enhancing the natural environment" relate to subcl (3)? Greater clarity is required. Otherwise see the comments for subcl (3).

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the well-being of present generations without compromising the wellbeing of future generations.
 	
(2) To achieve the purpose of the Act,—
 	
(a) use of the environment must comply with environmental limits; and
 	
(b) outcomes for the benefit of the environment must be promoted; and
 	
(c) any adverse effects on the environment of its use must be avoided, remedied, or mitigated.
 	
(3) In this section, Te Oranga o te Taiao incorporates—
 	
(a) the health of the natural environment; and
 	
(b) the intrinsic relationship between iwi and hapū and te Taiao; and
 	
(c) the interconnectedness of all parts of the natural environment; and
 	
(d) the essential relationship between the health of the natural environment and its capacity to sustain all life.
	• (b) does not provide for use and development for the growth and prosperity of communities, and the significant infrastructure services, required to address housing, 3 waters and other critical issues. It fails to deliver the Government's objective of use within limits.
	• Within (b) "without compromising" is a bottom line and this is significantly stronger than under the RMA (and in cl 14(b)). Consistency is essential, it is unclear why the wording departs from the wording provided in the government's objective for the reforms. This wording creates significant uncertainty and will lead to extensive litigation.
	• There is no recognition in (1), or cl 5, of the built environment and 'urban areas'. It is widely accepted that the RMA has failed urban areas and the NBA risks repeating this without providing strategic direction for the areas where most New Zealander's live, work and play.
	• Subclause 5(2):
	  • There is no provision in (a), or in subcl (2), for use and development within limits to be enabled (or ensured) despite the government's objectives for the reforms. The drafting, and hence the NBA, only provides the protection half of the story.
	  • (b) – what are "outcomes for the benefit of the environment"? Are they different to s8? Why are they only promoted? This provision

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	is so vague as to provide no meaningful assistance. It does not achieve the government's objectives for the reforms nor will it lead to significant urban, built environment and infrastructure issues being addressed through the NBA. • In addition (b) is weakly drafted when (a) and (c) use "must". • Adverse effects are retained by (2)(c). So the NBA is limits, outcomes and effects based. • Subcl (2) contains no specific provision for use and development to be enabled, nor any recognition of, or direction for, the need for the issues facing urban areas, the built environment or the infrastructure to be addressed. The NBA accordingly will not meet the reform objectives and will not be enduring. • Subclause 5(2): • The use of Te Oranga o te Taiao is fine but as with any concept it is amorphous and will evolve over time. To provide regulatory and policy guidance provisions within the NBA must be certain and clear. It requires a meaning which is missing. Otherwise there will be extensive, and ongoing litigation. • For example, in (3) "incorporates" is not exclusive so over time other provisions will be added in through case law. Given (1)(a) it appears that (3)(a), (c) and (d) is to be read with the words "protecting and enhancing" (but not (b)). (b) only relates to iwi and hapū

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	and not whānau, but also does not relate more broadly to other people and communities. Great care and consideration need to be given to what is intended. • With clause 5(d) "sustain all life" is very broad – does this mean every individual? Why not reuse other ecological drafting and defined terms rather than create a new provision? • The purpose contains no reference to human health and safety yet this is a significant issue for local communities. Is that deliberate? The NBA is internally inconsistent as human health is not in the purpose, but is a purpose for limits under cl 7 and then is not mentioned in cl 8. • There is no link within the purpose for the 'strategic goal' process set out within cl 14. That leaves that clause hanging but it appears to be pivotal to the processes in Part 3 of the NBA. The scene for strategic goals, and some clarity for them should be within the purpose and contained in Part 2.
6 Te Tiriti o Waitangi All persons exercising powers and performing functions and duties under this Act must give effect to the principles of Te Tiriti o Waitangi.	• Giving effect to the principles is very strong. With Te Oranga o te Taiao (and other changes) the NBA places iwi and hapū at the forefront of the new regime. • Clarity as to the principles is critical. Change over time so ongoing litigation risks and lack of policy confidence. The NBA must provide clarity as to what 'giving effect to' the principles of Te

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	Tiriti will contain and how it will actually be applied throughout the various processes in the NBA. Co-design of all planning (including the NPF) and greater co- and sole-governance will result (and local government looks forward to those developments, many of which it is already exploring). But central government will have to significantly lift resource and capacity to deliver this without extensive delays to the system and failure to achieve its reform objectives.
7 Environmental limits (1) The purpose of environmental limits is to protect either or both of the following: (a) the ecological integrity of the natural environment: (b) human health. (2) Environmental limits must be prescribed— (a) in the national planning framework (see section 12); or (b) in plans, as prescribed in the national planning framework (see section 25). (3) Environmental limits may be formulated as— (a) the minimum biophysical state of the natural environment or of a specified part of that environment: (b) the maximum amount of harm or stress that may be permitted on the natural environment or on a specified part of that environment.	• Limits are for "protection" of "ecological integrity" and "human health." However, there is no link in clause 7 to cl 14 and 'strategic goals' yet clause 14 applies to limit setting in cl 12. The purpose of limits must link to cl 14, and set out how it is to work, for the process to work with clarity and avoid litigation. Is the purpose that limits are set within the guidance of strategic goals – ie the goals that lead to the limits? It seems that is required to achieve the government's objectives and also to allow some flexibility, adaptability and innovation to deliver 'positive environmental outcomes'. If so that must be clearly in subclause 7(1). • Given cl5(1)(a) and cl 6 how can, or do, the limits reflect and fit within matauranga Māori? Are 'limits' the appropriate form to reflect the more holistic, including metaphysical, nature of matauranga Māori? Would targets be better to accommodate te ao Māori? • The focus of limits is on the natural environment without recognition of urban areas and the built environment. The likelihood is that existing RMA

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(4) Environmental limits must be prescribed for the following matters: (a) air; (b) biodiversity, habitats, and ecosystems; (c) coastal waters; (d) estuaries; (e) freshwater; (f) soil. (5) Environmental limits may also be prescribed for any other matter that accords with the purpose of the limits set out in subsection (1). (6) All persons using, protecting, or enhancing the environment must comply with environmental limits. (7) In subsection (3)(a), biophysical means biotic or abiotic physical features.	restrictions and approach which have failed urban areas will simply be replaced with a new set (or potentially stronger) of restrictions. • Clarity is required as to what happens when there are conflicts between limits – presently all must be achieved so not a single limit can be breached even if doing so is required to achieve another limit. Can there be a priority of limits? If so that needs to be explicit. • Allowance for local limits is made. To avoid litigation over what those should be, and those must be very limited and use methodologies set out in the NPF. Otherwise the purpose of the NPF will be undermined and extensive litigation will result. • The above points raise a question of whether targets may better than limits in some circumstances. The ability to set targets instead of limits should be explored to provide greater flexibility, adaptability, and innovation when appropriate. This is especially so to respond to natural hazards and climate change – otherwise communities may be locked out of better options. • The limits must be set using the precautionary approach (cl 16). Much is uncertain in environmental law. This specific requirement (which is repeated through the NBA exposure draft) creates a new avenue for legal challenge, will require considerable conservatism, and, as mentioned above the definition is vague further increasing the likelihood of litigation. Also, how would this work in urban areas and will it replace

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	amenity values to help protect the status quo? If such an intent is desired an adaptive management approach would be preferable. • Qualitative limits (cl 13) will add significant uncertainty unless very well drafted. Experience is that this does not occur and litigation results. As mentioned above the use of targets would be better for such issues rather than limits.

8 Environmental outcomes
 	
To assist in achieving the purpose of the Act, the national planning framework and all plans must promote the following environmental outcomes:
 	
(a) the quality of air, freshwater, coastal waters, estuaries, and soils is protected, restored, or improved;
 	
(b) ecological integrity is protected, restored, or improved:
 	
(c) outstanding natural features and landscapes are protected, restored, or improved:
 	
(d) areas of significant indigenous vegetation and significant habitats of indigenous fauna are protected, restored, or improved:
 	
(e) in respect of the coast, lakes, rivers, wetlands, and their margins,—
 	
(i) public access to and along them is protected or enhanced; and
 	
(ii) their natural character is preserved:
 	
(f) the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga is restored and protected:
	• General comments:
	  • The "national planning framework and all plans must promote" the listed outcomes - therefore the wording of each outcome is critical. All persons (including the Minister) limited by this wording.
	  • There is no clarity and consistency of 'outcomes' and they are drafted in different ways. The words (especially the verbs) must be used in a consistent manner.
	  • While it appears unintended (as the Minister is to choose priorities) there is a hierarchy of verbs used in clause 8. For example, directive wording includes preserve, protect, restore, improve, enhance, ensure and reduce. These are all based on environmental matters. Weaker wording includes enable, sustained (and sustainable use), sustained, contribute, support, promote are focused on climate change, use and development, urban areas, etc.

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(g) the mana and mauri of the natural environment are protected and restored: (h) cultural heritage, including cultural landscapes, is identified, protected, and sustained through active management that is proportionate to its cultural values: (i) protected customary rights are recognised: (j) greenhouse gas emissions are reduced and there is an increase in the removal of those gases from the atmosphere: (k) urban areas that are well-functioning and responsive to growth and other changes, including by— (i) enabling a range of economic, social, and cultural activities; and (ii) ensuring a resilient urban form with good transport links within and beyond the urban area: (l) a housing supply is developed to— (i) provide choice to consumers; and (ii) contribute to the affordability of housing; and (iii) meet the diverse and changing needs of people and communities; and (iv) support Māori housing aims: (m) in relation to rural areas, development is pursued that— (i) enables a range of economic, social, and cultural activities; and (ii) contributes to the development of adaptable and economically resilient communities; and	• The built environment does not even get a mention despite being central to the reasons for and the name of the NBA. • The clause must be explicit – does it prioritise the outcomes or not (and if the Minister is to decide that must be expressly stated)? • Only some outcomes are required in cl 13 to be included in the NPF. Does that indicate an importance to them over the other outcomes? If the NPF does not need to address all outcomes then why have them in the list in cl 8? Is it simply, like s7 of the RMA, a home for the political issue of the day to simply be added? • The outcomes for people and communities are particularly weak or simply not present. • There is no link to cl 14 to aid how the provisions work together for 'strategic goals'. How are these different concepts related? Clause 14 reads as a critical provision but is entirely disconnected. • The current drafting will add significant uncertainty and complexity to the system. Considerable case law will be required to resolve and determine what the outcomes mean (and how they are prioritised/applied) and how the provisions all fit together. Likely little difference from status quo given the verbs used align more towards ss6 and 7 of the RMA.

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(iii) promotes the protection of highly productive land from inappropriate subdivision, use, and development: (n) the protection and sustainable use of the marine environment: (o) the ongoing provision of infrastructure services to support the well-being of people and communities, including by supporting— (i) the use of land for economic, social, and cultural activities: (ii) an increase in the generation, storage, transmission, and use of renewable energy: (p) in relation to natural hazards and climate change,— (i) the significant risks of both are reduced; and (ii) the resilience of the environment to natural hazards and the effects of climate change is improved.	• Human health and safety is not included as an outcome despite being central to people and communities (and reforms such as three waters). • Specific comments: • Why does natural character need to be preserved over and above all the other outcomes? • How does reference to the mana and mauri of the natural environment fit with Te Oranga o te Taiao? Why is Te Oranga o te Taiao not an outcome when it is central to the purpose of the NBA? Or is it not supposed to be an operational concept? • How 'outcome' (i) aligns with the Marine and Coastal Area (Takutai Moana) Act 2011 and its case law will need to be carefully considered. • Climate change is widely recognised as the fundamental issue of our time. Many councils have acknowledged a climate emergency and parliament has passed a motion on it. But there is no prioritisation providing in outcome (j) (nor (p)). The Climate Change Commission has sought bold policy recognition and direction. This drafting does not deliver and will not achieve the government's objectives for the reforms. • The urban areas 'outcome' is limited in scope and vague. What does 'well-functioning and responsive to growth' mean? Within urban areas surely economic, social and cultural

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	activities should be ensured (and what is meant by a 'range')? There is much more to resilient urban form than transport (and why is it worded differently to clause 8(m)(ii)?). New Zealand needs adaptable and economically resilient urban areas too. This outcome is underwhelming and continues the RMA's approach of failing to provide for, and recognising the characteristics of, urban areas where most New Zealanders 'live, work and play'. • The 'outcome' for housing is also weakly worded. It provides no indication that we have a housing crisis that requires immediate action. No recognition is provided as to the need for supporting infrastructure as being critical to resolving issues. Surely, we need to do more than 'develop' outcomes that 'contribute' to housing affordability? Bold direction is required. • The outcome for infrastructure causes significant concern for local government. Housing, climate change and three waters (let alone transport and electricity generation) are critical matters that require express recognition (which renewables have, rightly, achieved). Again, urgent action is required and 'supporting' land use for economic, social and cultural activities will fail to deliver it. That is the lowest level of provision. There must be specific recognition and strong direction to ensure the delivery of nationally and regionally

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	significant infrastructure. The NBA must allow for people and communities to grow and prosper.
Part 3 National planning framework Requirement for national planning framework 9 National planning framework (1) There must at all times be a national planning framework. (2) The national planning framework— (a) must be prepared and maintained by the Minister in the manner set out in Schedule 1; and (b) has effect when it is made by the Governor-General by Order in Council under section 11.	• The NPF is critical to the centralisation and nationalisation of power into the hands of the Minister through the NBA. As mentioned in the main body of the submission local government supports having an NPF (especially an integrated one) but it must be set to the right level and have the right checks and balances. • The NPF should be prepared and developed by the Minister in partnership with iwi and hapū and local government. This should be stipulated within clause 9. How that partnership would work needs to be designed but cl 6 will require co-design with iwi and hapū and adding local government, with its significant sector and technical experience, will ensure that the NPF will be practical and implementable. It will also ensure a community 'voice' in the NPF process. • The NBA must provide a clear order for plans and timing for delivery. The NPF must be delivered before any Regional Spatial Strategy which must come before the NBA plan for that region. Otherwise the system puts the cart before the horse and system efficiency and effectiveness will not be delivered. In addition huge costs and community time will be wasted as plans are redone and amended. As noted in the general submission a long, staged, transition period will be required to enable this to occur.

NBA Exposure Draft Reference	Comments
10 Purpose of national planning framework The purpose of the national planning framework is to further the purpose of this Act by providing integrated direction on— (a) matters of national significance; or (b) matters for which national consistency is desirable; or (c) matters for which consistency is desirable in some, but not all, parts of New Zealand.	• Local government supports a single, integrated, NPF but delivering it will be a significant challenge (hence the need for local government inclusion in development). Experience to date is that national documents have had challenges in drafting, are not integrated and often have practical outcomes that were unintended. These issues must not be continued, and local government can help to deliver robust regulation. But the NBA must specify that process. • The list does not include 'helping' to resolve conflicts – that is left to cl 13(3). Given that the outcomes are a key part of the NBA the resolution of conflicts among them must be in the purpose of the NPF. This simply creates uncertainty. • Reference in (a) to 'national direction' does not link to the 'strategic goals' in cl 14. What is the role of cl 14 and that role should be also included in the purpose of the NPF? Again, this just creates uncertainty.
11 National planning framework to be made as regulations (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make the national planning framework in the form of regulations. (2) The regulations may apply— (a) to any specified region or district of a local authority; or	• As mentioned for clause 9 local government considers that significantly greater controls on the Minister are required. While the processes in the RMA may be cumbersome, they provide rigour and a degree of 'check' on the Minister. While having the NPF as a regulation is an improvement it is not adequate and the NBA must set out a development process for the NPF (at least a partnership/co-design process mentioned above is required).

NBA Exposure Draft Reference	Comments
(b) to any specified part of New Zealand. (3) The regulations may— (a) set directions, policies, goals, rules, or methods: (b) provide criteria, targets, or definitions. (4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).	• The provisions allow, with no checks, the Minister of the day to redraft the NPF. Given the NPF is central to the NBA that significantly reduces certainty.
Contents of national planning framework 12 Environmental limits (1) Environmental limits— (a) may be prescribed in the national planning framework; or (b) may be made in plans if the national planning framework prescribes the requirements relevant to the setting of limits by planning committees. (2) Environmental limits may be prescribed— (a) qualitatively or quantitatively: (b) at different levels for different circumstances and locations.	• Allowing NBA plans to also set environmental limits is discussed above. Carefully considered methodologies and scope is required to avoid undermining the NPF or creating another tier of potential litigation region by region around New Zealand. • As mentioned above, qualitative environmental limits provide scope for significant uncertain and litigation. That does not provide system efficiencies and they add complexity. The definition and use of natural inland wetland within the NPSFM and NESFW provide a recent example of the importance of being precise in language and testing carefully the implementation and practical realties of the drafting. Qualitative issues may be better addressed through targets than as limits.
13 Topics that national planning framework must include (1) The national planning framework must set out provisions directing the outcomes described in—	• As mentioned above, if only nine outcomes must be addressed in the NPF why not reduce the number of outcomes in clause 8? Also, why not prioritise these outcomes over the others in clause 8 as they are clearly considered to be more important?

NBA Exposure Draft Reference	Comments

(a) section 8(a) (the quality of air, freshwater, coastal waters, estuaries, and soils); and
(b) section 8(b) (ecological integrity); and
(c) section 8(c) (outstanding natural features and landscapes); and
(d) section 8(d) (areas of significant indigenous vegetation and significant habitats of indigenous animals); and
(e) section 8(j) (greenhouse gas emissions); and
(f) section 8(k) (urban areas); and
(g) section 8(l) (housing supply); and
(h) section 8(o) (infrastructure services); and
(i) section 8(p) (natural hazards and climate change);.
 	
(2) The national planning framework may also include provisions on any other matter that accords with the purpose of the national planning framework, including a matter relevant to an environmental outcome provided for in section 8.
(3) In addition, the national planning framework must include provisions to help resolve conflicts relating to the environment, including conflicts between or among any of the environmental outcomes described in section 8.
	• While it is promising to see urban areas, housing and infrastructure included as mentioned above the outcomes sought are very weak and insufficiently bold to deliver the outcomes New Zealand needs (the same applies to climate change and natural hazards).
	• In relation to (3) there are two issues:
	  • Firstly, the NBA should take the initial, strategic role of prioritising and resolving tensions (noting that that needs to be expressly stated within the NBA).
	  • Secondly, within the guidance provided by the NBA, the NPF must, as was the clear intent of the review Panel, resolve tensions in relation to the environment or among the numerous outcomes. That role should not be ignored at the national level and 'fobbed off' to local government. The word "help" should be deleted and clarity as to strategic conflict resolution must be within the NBA itself and at a national level must be provided in the NPF.
	• Unless the Minister commits to delivering clarity and certainty through the NPF then the rest of the planning framework, and the NBA itself, will unravel.

14 Strategic directions to be included The provisions required by sections 10, 12, and 13 must include strategic goals such as—	• This is a critical clause. It should be incorporated within Part 2 of the NBA and, as mentioned above linked with clauses 5, 7 and 8. Drafted as it is it sits on its own and jars with the earlier drafting.

NBA Exposure Draft Reference	Comments
(a) the vision, direction, and priorities for the integrated management of the environment within the environmental limits; and (b) how the well-being of present and future generations is to be provided for within the relevant environmental limits.	• Clarity of its role and functions is critical. At present it appears to help direct limit setting and outcome development, but its actual role is unclear. Is it directive or more evaluative? Strategic goals must be included but what effect do they have? Can they be ignored, or must they be complied with – if the latter then how does that fit with limits and outcomes? • Is 'integrated management' the same as 'integrated direction' in clause 10? • Clause 14(b) uses the wording from the government's objectives for the reforms, so it is drafted differently to the wording in clause 5(1)(b)? Consistency must be achieved to avoid uncertainty and conflict. LGNZ considers that clause 5(1)(b) should be redrafted to match clause 14(b) on this issue.
15 Implementation of national planning framework (1) The national planning framework may direct that certain provisions in the framework— (a) must be given effect to through the plans; or (b) must be given effect to through regional spatial strategies; or (c) have direct legal effect without being incorporated into a plan or provided for through a regional spatial strategy. (2) If certain provisions of the national planning framework must be given effect to through plans, the national planning framework may direct that planning committees— (a) make a public plan change; or	• Where the NPF includes highly directive provisions then time and money should not be wasted on lengthy processes for them to be included in NBA plans. This should be a requirement not a choice of the NPF (as to date they are often silently passing significant costs onto local government for no benefit).

NBA Exposure Draft Reference	Comments
(b) insert that part of the framework directly into their plans without using the public plan change process; or (c) amend their plans to give effect to that part of the framework, but without— (i) inserting that part of the framework directly into their plans; or (ii) using the public plan change process. (3) Amendments required under this section must be made as soon as practicable within the time, if any, specified in the national planning framework.	
16 Application of precautionary approach In setting environmental limits, as required by section 7, the Minister must apply a precautionary approach.	• Clause 18 provides a general precautionary approach provision so this clause (and clause 24(3)) are simply repetitive and should be deleted. • As mentioned above, given the wide limited knowledge of the environment and the need for innovation, adaptation and flexibility, legally stipulating such an approach will add significant conservatism to all processes and outcomes, challenging the government's objectives for the reforms. If some form of precaution is required, an adaptive management type approach may be more enabling and more aligned with the government's objectives for the reforms.
17 [Placeholders] [Placeholder for other matters to come, including— (i) the role of the Minister of Conservation in relation to the national planning framework; and	• Will comment once content is included.

NBA Exposure Draft Reference	Comments
(ii) the links between this Act and the Climate Change Response Act 2002.]	
18 Implementation principles [Placeholder for implementation principles. The drafting of this clause is at the indicative stage; the precise form of the principles and of the statutory functions they apply to are still to be determined. In paras (b) and (e), the terms in square brackets need to be clarified as to the scope of their meaning in this clause.] [Relevant persons must]— (a) promote the integrated management of the environment: (b) recognise and provide for the application, in relation to [te taiao], of [kawa, tikanga (including kaitiakitanga), and mātauranga Māori]: (c) ensure appropriate public participation in processes undertaken under this Act, to the extent that is important to good governance and proportionate to the significance of the matters at issue: (d) promote appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under this Act: (e) recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of [te Taiao]: (f) have particular regard to any cumulative effects of the use and development of the environment: (g) take a precautionary approach.	• The principles are silent on system efficiency and effectiveness and reducing complexity. No equivalent of s18A of the RMA has been included, even as a placeholder. Changes will not occur unless the NBA itself sets the new direction and expectations. • While recognising its placeholder nature many of the provisions are not appropriately located (especially the cultural provisions) or are very vague – for example what does 'appropriate' public participation require – especially when related to 'good governance'? How will that influence processes?

NBA Exposure Draft Reference	Comments
Part 4 Natural and built environments plans Requirement for natural and built environments plans 19 Natural and built environments plans There must at all times be a natural and built environments plan (a plan) for each region.	• See the general submission. • As mentioned above timing is key and NBA plans must follow RSS which follow the NPF.
20 Purpose of plans The purpose of a plan is to further the purpose of the Act by providing a framework for the integrated management of the environment in the region that the plan relates to.	• This is a very brief and unstructured purpose. It provides little meaningful guidance to plan drafters as to the overarching purpose. Could provide significantly greater linkages to strategically align the plan.
21 How plans are prepared, notified, and made (1) The plan for a region, and any changes to it, must be made— (a) by that region's planning committee; and (b) using the process set out in Schedule 2. (2) [Placeholder for status of plans as secondary legislation.]	• Will comment once detail is provided.
22 Contents of plans (1) The plan for a region must— (a) state the environmental limits that apply in the region, whether set by the national planning framework or under section 25; and (b) give effect to the national planning framework in the region as the framework directs (see section 15); and (c) promote the environmental outcomes specified in section 8 subject to any direction given in the national planning framework; and	• Much detail is yet to come. • While having one plan per region is good given the provisions and complexities plans will remain very lengthy and may be more complex. • The planning transition needs very careful thought as moving to outcome-based plans will require complete redrafting (roots and all change). • See comments in the general submission.

NBA Exposure Draft Reference	Comments
(d) [placeholder] be consistent with the regional spatial strategy; and (e) identify and provide for— (i) matters that are significant to the region; and (ii) for each district within the region, matters that are significant to the district; and (f) [placeholder: policy intent is that plans must generally manage the same parts of the environment, and generally control the same activities and effects, that local authorities manage and control in carrying out their functions under the Resource Management Act 1991 (see sections 30 and 31 of that Act)]; and (g) help to resolve conflicts relating to the environment in the region, including conflicts between or among any of the environmental outcomes described in section 8; and (h) [placeholder for additional specified plan contents]; and (i) include anything else that is necessary for the plan to achieve its purpose (see section 20).	• Having NBA plans being 'consistent' with the RSS makes sense but reiterates that the RSS must come before the NBA plans. • By the time of NBA plans, conflicts must have been addressed at a strategic level through the NBA itself, at a national level through the NPF and at a regional level through the RSS. It is therefore only at a local level that NBA plans should need to consider conflicts. As mentioned above the NBA itself, and the Minister, must provide clarity as to conflicts and to the strategic and national conflict resolution. • In relation to (2) the provisions that NBA plans may include is broader than under the RMA – will this provide system efficiency and effectiveness? • In (2) local government does not want to direct a stated use for particular parcels of land beyond the higher level zoning controls.
(2) A plan may— (a) set objectives, rules, processes, policies, or methods: (b) identify any land or type of land in the region for which a stated use, development, or protection is a priority: (c) include any other provision.	
Planning committees 23 Planning committees	• See comments in the general submission.

NBA Exposure Draft Reference	Comments
	• LGNZ's position is that there is no 'problem' definition being resolved by the creation of planning committees and establishing a whole new level of bureaucracy. Local Government wants to work with MfE to focus on establishing the correct and efficient processes while retaining current decision-making frameworks. • While little detail is provided some initial comments on the present NBA drafting are: • The planning committees have ongoing responsibility so they will permanently replace the role and functions of local authorities – considerable thought has to go into the structuring and governance of these new bodies, their legal obligations and liabilities, and their funding; • The planning committees will themselves set any limits without a recommendation for an independent hearings panel but no process nor skill requirements is provided for such significant decisions (clause 23)(2)(c); • The planning committees are not required to have regard to the recommendations of the independent hearings panel when deciding to accept or reject those recommendations (cl 24(2) (so why bother having the hearing process?) and is the committee required to give reasons for its decisions? • There is no rationale under the NBA as to why solely the Minister of Conservation should appoint a representative (especially when that role appears to apply beyond the coast);

NBA Exposure Draft Reference	Comments
	• The function of the secretariat is very broad – as already mentioned it will become a whole new entity in itself and require significant resourcing and while proposed to be funded by local government has no local obligations, functions, or accountability and control for money spent; and • Local government should not fund a process from which locals are excluded, a Crown Minister is represented and iwi and hapū costs must lie with the Crown.

Āpitihanga A | Appendix A

Resource Management Reform Principles Paper

Resource Management Reform: Key issues for local government

Introduction

This note provides an overview of six key, high level issues associated with the resource management (**RM**) reform and recommends a position to be adopted by LGNZ. In doing so, it identifies seven principles that can be applied to assess a range of lower order issues that will arise as the reform process progresses to underpin advocacy and engagement.

Background

The Government has advised that it is committed to reforming the resource management system in the current parliamentary term. Cabinet has announced the scope, process and approach to reform.

The reform is based on the comprehensive review of the resource management system carried out by the independent Resource Management Review Panel (**RM Panel),** led by Hon Tony Randerson, QC.

The Government will repeal and replace the RMA with three new laws. These are:

- Natural and Built Environments Act (NBA)
- Strategic Planning Act (SPA)
- Managed Retreat and Climate Change Adaptation Act (CAA).

Summary of key proposals

a. *Natural and Built Environments Act* (NBA)– for integrated land use planning and environmental protection (to promote positive environment outcomes, manage development within limits and avoid, remedy or mitigate adverse environmental effects). It would be the principal Act which would cover much of the territory currently managed under the RMA. There are key differences, however. These include:

- a rewritten statutory purpose;
- 14 regional-scale *combined plans* to replace the existing 100+ district and regional plans and RPSs;
- an approach to developing those 14 combined plans that largely removes councils from the policy making/approving role; and
- mandatory national environmental limits and a greater emphasis on national direction and oversight

b. *Strategic Planning Act (SPA)* – Would be a new and additional law that would aim to promote wellbeing through preparation of high level, multi-agency *regional spatial strategies* (**RSSs**) that, applying a 30-year horizon, provides direction for urban growth and land use change as well as spatially identifying (mapping) environmental/cultural values and constraints and spatial responses to climate change. It doing so the Act would promote strategic (spatial) integration of 'planning' functions under other laws including the NBEA, LGA, Land Transport Management Act (LTMA) and the Climate Change Response Act (CCRA). Combined plans (that would replace all district and regional plans) would need to be consistent with the relevant RSS. RSSs would be prepared at the regional scale by joint committees comprising representatives of central government, regional councils, territorial authorities and mana whenua. They would be independently chaired and agreement would be by consensus (or mediation or Ministerial intervention where that consensus is not achieved).

c. *Managed Retreat and Climate Change Adaptation Act* (CCA) - would provide for 'managed retreat', powers to change established land uses and would address liability and options for potential compensation.

Implications for local government

There is no express intention that the resource management reform be associated with structural change of local government. Indeed, Minister Parker is understood to want to avoid such an outcome. However, the nature of the proposals is such that it is possible that the question of sector reform will arise – either now or later as a consequence of implementation of the reform proposals as currently conceived. The likelihood of this is enhanced by the proposed reform of 'three waters' service delivery functions and a possible narrowing of core roles and purpose.

In responding to this issue, it will be important for the sector to stress three connected prerequisites for successful, durable resource management that incontrovertibly demonstrate the case for local government to be at the centre of resource management decision-making.

1. The need for community-building and placemaking that reflects local communities and local values
2. The importance in "bottom up", community-driven planning that applies local knowledge and context to deliver successful outcomes
3. The need for decision-makers to make informed, but inevitably subjective, judgements in a world of incomplete information and diverse views.

In short, the sector's position in response to any re-assessment of the role of local government in a future resource management system, must be that elected representatives retain a meaningful role in *policy making* on behalf of the communities they represent, and that councils not be relegated to local administrators of others' policy decisions. How that outcome might be challenged by the reform proposals is discussed with reference to the four issues outlined below.

Key issues

The resource management system is highly complex and the RM Panel recommendations raise dozens, if not hundreds of technical issues, regarding matters of system design. However, sitting above those many issues are five key issues that are of paramount importance to local government.

1. Statutory purpose – what's the business of resource management?

At the centre of any resource management system is the *statutory purpose*. The statutory purpose provides a 'super-objective' that acts as a touchstone for all actions and decisions made under the Act. The RM Panel's proposal is to continue a lengthy values-based purpose similar to that currently included in the RMA but redrafted in an effort to improve clarity of intent.

The key issue that has arisen is whether the redrafted provision properly prioritises protection of the biophysical environment (air, land, water and ecosystems) above the use of resources for community and individual well-being. The Government has been explicit that the protection of the biophysical environment should be the 'super-objective' and this is one of the reasons for reform of the existing RM legislation.

The Parliamentary Commissioner for the Environment (**PCE**) has challenged the proposed wording on the basis that wording proposed potentially allows 'trade-offs' whereby if there is sufficient economic, social or cultural value to be extracted environmental degradation may be justified.

The recommended sector position is as follows:

- If the fundamental purpose of this legislation relating to natural resource management is to ensure that those resources are sustained for future generations, it cannot allow for the unsustainable use of the natural environment and inviting such "trade-offs" should not be part of the statutory purpose; however…
- People and communities need to use resources to survive and prosper and virtually all use has some level of adverse effect. If the needs of people and communities are not recognised in the purpose of the

legislation somehow, then there is no reason for plan-making/regulatory agencies to provide for any use, which is clearly an outcome the sector/communities do not want and would not support. The Act needs to provide a basis for councils to allow/enable resource use.

- Part of the answer is to ensure that the Act accepts that not all adverse effects represent an unsustainable use that compromises future generations. There is a degree of scale and intensity that is appropriate to consider.
- While local government can be open to some refining of the RMA's purpose (which has been the source of some uncertainty), it should urge some caution. Any new purpose should not seek to "balance" environmental, social, economic and cultural benefits but should seek to clearly define the when and how economic, social and cultural considerations should be considered.
- The approach proposed by the RM Panel of recognising all values (environmental and socio-economic) and (largely) relying on national policy guidance and/or new combined regional plans to resolve conflicts is not appropriate. The legislative purpose must, as far as possible, seek to resolve uncertainty and potential conflict, not provide a source of uncertainty and conflict.

For those reasons it is recommended that the sector should support, in broad terms and subject to further refinement, the drafting proposed by the PCE in preference to that proposed by the RM Reform Panel. The key part of the PCE's proposed wording is included below.

PCE's proposed statutory purpose

5. Purpose

The purpose of this Act is to:

1) Ensure that the use, development and protection of the natural environment and the built environment is managed in a way that will—
   (a) sustain the potential of the natural environment to meet the reasonably foreseeable needs of future generations; and
   (b) safeguard the life-supporting capacity of air, water, soil, and ecosystems (including restoring life-supporting capacity where it has been lost); and
   (c) avoid, remedy, or mitigate any adverse effects of activities on the natural environment.
2) Subject to subclause (1), enable people and communities to determine how the natural environment and the built environment may be used to promote their social, economic, and cultural wellbeing and their health and safety.
3) Provide for the allocation of public freshwater resources, air and coastal space in a manner which is consistent with subsection (1).
4) Provide for spatial planning.
5) In this section:
   (a) The ***natural environment*** means natural resources including land, water, air, soil, minerals, and all forms of plants and animals (except humans) and other living organisms (whether native to New Zealand or introduced) and their habitats, and includes ecosystems.
   (b) The ***built environment*** includes human-made buildings, structures, places, facilities, infrastructure and their interactions which collectively form parts of urban and rural areas in which people live, work, and recreate.

Principle 1: Sustainability and well-being of communities

The resource management system must promote **environmental sustainability** and the needs of future generations but it must also expressly provide for the economic, social and cultural **well-being of people** and communities recognising that resource use and development is critical to community wellbeing and can itself produce positive environmental outcomes.

2. Decision-makers – what's the role of elected representatives?

The RM Panel proposes that new single combined district and regional plans (including the RPS) for each region be prepared by "*fully autonomous joint committees*" (with the assistance of a secretariat funded by the

constituent local authorities) comprising representatives from DoC, the regional council, territorial councils and mana whenua. These joint committees would manage the plan through the hearing process as if they were 'the council'. MfE would commission an 'audit' of the plan before notification. Hearings would be held (and recommendations made back to the joint committees) by independent panels chaired by an Environment Court judge. Individual councils would not have any decision-making role. The RM Panel does not state whether joint committees would be comprised of elected members or executive members. It appears either, or some combination, would be possible.

This brings into question what the role of elected representatives ought to be in resource management decision-making.

The model put forward by the RM Panel means that some elected representatives could have some role in plan preparation (potentially for provisions applying to areas outside their elected mandate) but no role in making decisions on the final form of the plan. The council as a whole, however, would have no role at either development or approval stage.

The RM Panel's proposal for plan decision-making responds to a misdiagnosed problem. Issues identified by the RM Panel include plans not offering sufficient protection to the natural environment or which are of poor quality, or which are delivered after slow and litigious processes. These issues are not attributable to the nature of the decision-makers but rather to the nature of the process that council decision-makers are required by law to apply and to the incentives that process has created[1].

Two issues arise with the RM Panel's recommendations:

- The model creates an asymmetry of accountability. Local electoral processes mandate and hold to account elected members for outcomes they will not (necessarily) control under the proposals. Existing electoral processes will potentially mandate elected members in respect of one district (or function) but they would be (jointly) responsible for policy making for entirely different districts (or functions). That seems wholly unsatisfactory.
- Elected members risk being relegated from *policy makers* to merely funders and spectators of a process over which they may have no control. They will be effectively side-lined from the role to which their community presentative status makes them uniquely suited – that is, making mandated, values-based judgements.

Accordingly, it is recommended that the sector's position be that those accountable for polices should have a meaningful role in the development of policies.

Principle 2: Accountability follows responsibility

Those that are accountable for policies and their implementation need to have a meaningful role in the development and approval of those policies.

Principle 3: Democratic, values-based decision-making

Where information is incomplete and where judgements between relevant competing values must be made (as is routinely the case with resource management decisions), decisions ought to be taken by those with a democratic mandate to represent communities (or by their direct appointees).

[1] These include: (1) the very high evidential basis needed to justify decisions and the adversarial (and costly) nature of the process encouraging a risk adverse approach; (2) the very high expectations around participation and consultation and legal determinations that have driven risk averse (over-consulting) behaviour; and (3) the challenging obligation to engage and involve tangata whenua and the often misalignment of expectations, asymmetry of technical capability, and difficult issues of mana and mandate to navigate.

3. Planning – bottom-up or top-down?

One of the key new dimensions proposed by the RM Panel is a separate statute mandating spatial planning undertaken at the regional scale (in the form of regional spatial strategies - **RSSs**) to provide a strategic framework for the combined plans under the NBEA and other forms of planning under other statutes (including the Land Transport Management Act). In practice, a key function of RSSs will be to provide long-term direction and planning for urban growth and land use change (including, potentially, rural land use change and responses to climate change).

The approach proposed for preparing and approving RSSs (and combined regional and district plans), can best be described as "top down". Although RSSs are described as "strategic and high level" they are prepared by *joint (multi-party) committees* as described in relation to Issue 2 above.

This means that, core place-making decisions that affect a community (such as how much, and what type of growth should be provided for) will not be taken solely by representatives of that community but by multi-party committees many of whose members will represent other, quite different constituencies with, potentially quite different values and priorities. In short, it risks taking the 'local' out of 'local planning'.

The local government sector's position is recommended to be that a high degree of *local* planning should be retained. Local planning is important because of the diversity of communities and the need for planning decisions to be informed by the views of, and taken by representatives of, those most directly affected. Key to retaining local planning is to retain the potential for discrete district plans rather than a single combined plan (although such plans should be enabled and encouraged where districts have a high degree of common interest).

Regional-scale spatial planning and the integration of land use planning with utility and social infrastructure planning is supported. An element of top-down planning is important – particularly for the planning of regional and national networks and services. However, RSSs should be *informed by* district planning rather than purely directive of such planning. Getting this balance right will be critical to building strong communities with a sense of place and identity.

> *Principle 4: Subsidiarity in planning*
>
> Planning decisions should be taken at the level of those most directly affected. That requires retaining a strong degree of local planning. Local planning needs to be integrated with planning at a broader scale to the extent that communities affected by decisions that extend beyond the local, but the latter should not subsume the former.

4. New roles – How can local decision-making address national issues?

The proposed new purpose and principles of the NBEA makes two significant changes to identified matters of national interest that potentially extend the functions of councils into matters that have previously been regarded as matters for national (central government) attention.

The first is requiring functionaries under the Act to "*give effect*" to the principles of the Treaty of Waitangi as opposed to simply taking those principles into account. This is a significant change because:

a. There is still no exclusive list of Treaty principles with the prospect that these will continue to change and evolve as a result of Waitangi Tribunal and Court consideration (hence the sector cannot be entirely sure what it may, in the future, need to give effect to); and
b. One of the well-accepted Treaty principles is that of *redress*. Redress for Treaty breaches has always been regarded as a matter for the Crown. Hence, an express acceptance that the RMA ought to be used to deliver redress will likely raise expectations amongst Māori that will be difficult for councils to manage (and manage consistently) in the absence of very clear national guidance (what form and level of redress is appropriate through RM decision-making, in what situations etc). In the absence of such guidance councils can expect to encounter difficult and litigious processes (particularly when redress, in the form of public resources, can only occur at the expense of others already using those resources).

The second new direction is to reduce greenhouse gas (**GHG**) emissions. Previously councils' role in climate change has been limited to a concern for the efficient end use of energy, the benefits of renewable energy and the *effects* of climate change (ie. adaptation to, for example, rising sea levels and changing patterns of precipitation etc). A role in GHG reduction broadens the role of councils under resource management law. The change is significant because:

a. GHG emissions are pervasive throughout the economy and will relevant to a great many activities controlled either directly or indirectly by the resource management system (including, for example, increasing farming of ruminant animals, forest clearance/harvest, all combustion activities and many industrial processes, provision of transport infrastructure etc)
b. Given the growing urgency around climate change, public interest will be high and councils will face expectations for progress and national consistency across sectors, across regions and over time that will be difficult to meet, particularly given the complexity associated with differential costs per unit of GHG emissions reduction across sectors, the potential for high economic consequences of decisions and the existing economic mechanisms already in place at the national level (including, in particular, the emissions trading scheme).

While neither of these new matters are necessarily inappropriate to include in the new RM legislation, both raise issues that are unmistakably national in scope and which can only be resolved by a nationally directed and coordinated response.

The challenge posed is recognised in the RM Panel report to the extent it proposes mandatory national policy direction on both those (and other) matters. However, there would seem to be every likelihood that responsibility for these matters will fall on local authorities well before any national direction is issued.

To avoid uncertainty and potentially significant litigation cost, the sector position is recommended to be that councils' obligations to give effect to these new national considerations in decision-making should only apply once comprehensive national direction has been issued.

Principle 5: National issues require national policy guidance

Local government welcomes a role in addressing issues of national importance and will need clear and comprehensive national policy direction (and where appropriate funding support) in advance of assuming responsibility.

5. How should local government's relationship with Iwi/Māori be characterised?

Local authorities are not "the Crown". Therefore, local authorities are not the Treaty partner with the responsibilities that go with being the Treaty partner. However, local authorities are *agents* of the Crown. They carry our regulatory and policy making roles that reflect, and give expression to, the Crown's sovereign duty to manage natural resources. Accordingly, it is incumbent on local authorities to properly represent the Crown through adopting a *partnership* approach with Iwi/Māori. This is hardly new and has been embedded in the way local authorities do business for many years. Nevertheless, it is important to record that the iwi/Māori view on what effective partnership entails will often extend beyond current arrangements.

The reform proposals include a number of measures designed to recognise the partnership principle (and other Treaty principles) including referring to the concept of Te Mana o te Taio in the purpose of the NBEA, the requirement to 'give effect' to the Treaty Principles (as discussed above), a mandatory mana whenua representation on joint committees, and the establishment of a National Maori Advisory Board.

Despite those initiatives, there is potential for the reform to frustrate local authorities' ability to give adequate recognition to the partnership principle. That is because partnership needs to be meaningful from the perspective of iwi/Māori. Engagement needs to be at the scale of the rohe of mana whenua. Having other's speak for mana whenua will is not a viable option. Whakapapa and rangatiratanga need to be understood and respected in the resource management process. Engagement needs to be genuine, issues identified and addressed by planning interventions need to be relevant and meaningful to mana whenua and their respective

rohe. Progress on resolving difficult resource management issues will be thwarted if mana whenua do not consider that the process reflects those basic partnership principles.

It is unclear whether or how regional scale joint committees can deliver the localised engagement and recognition that is likely to be required.

Principle 6: A commitment to partnership with mana whenua

Resource management legislation needs to adequately reflect a commitment to partnership under the Treaty and greater collaborative governance by ensuring it is reflected in:

- plan development and central and local decision-making processes
- the scale of local decision-making
- the substance of decisions made.

6. How should the transition be managed?

All local authorities have existing plans. Some of these plans have only recently been made operative. Some local authorities are part way through the process of preparing new plans or plan changes. The plan-making processes are very expensive and burdensome processes. In some cases, difficult issues have only recently been settled through lengthy Environment Court proceedings. Communities have participated in good faith in these recent processes and have themselves often expended large sums on that participation.

Compounding these issues is the requirement for RPS's to be reformatted by the end of 2022 to be compliant with the National Planning Standards (and other national planning standard obligations) and for regional councils to notify NPSFM-compliant land and water planning provisions by the end of 2024 (meaning they need to invest in these plan making processes now).

All this suggests that a transition is required that recognises the currency of plan provisions and which does not require the early re- notification of provisions that have only recently been settled or which otherwise remain fit for purpose (or which have been specifically developed in response to legislative requirements and government policy direction).

Given that combined plans will cover regions where they are planning provisions of various ages and suitability this transition may, of necessity, need to be complex. Combined plans that do not comprehensively consider all areas and all relevant issues within the region would present a risk of poor integration and unintended consequences.

Expectations for engaging meaningfully with mana whenua have significant resourcing implications, not least for mana whenua themselves. To ensure that engagement is genuine and adds value for all parties, mana whenua will often need considerable support, including financial support.

Principle 7: Commitment to implementation

Successful implementation of RMA reforms will require a carefully designed transition to minimise unintended consequences and unreasonable transaction costs. Central government funding will be required to ensure successful delivery by both central and local government, and to build capacity of iwi/Māori.